

Montana Water Court
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MONTANA WATER COURT
LOWER MISSOURI DIVISION
JUDITH RIVER
BASIN 41S
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Christian J. Lund; Richard C. Lund

CASE 41S-2343-R-2025
41S 135340-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Christian J. Lund and Richard C. Lund (the Lunds) are the record owners of claim 41S 135340-00.

2. Claim 41S 135340-00 was decreed with Montana Department of Natural Resources (DNRC) issue remarks:

- ALTHOUGH NOT OBJECTED TO, THE SOURCE NAME WAS CHANGED TO REFLECT THE CHANGES SUGGESTED BY THE UNITED STATES OF AMERICA, DEPARTMENT OF INTERIOR IN THEIR 1987 DECISIONS ON GEOGRAPHIC NAMES IN THE UNITED STATES. THIS MAY BE HEARD AT THE PRELIMINARY DECREE STAGE.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA. THE STRETCH OF INSTREAM USE CANNOT BE IDENTIFIED EITHER.
- AN AMENDMENT WAS SUBMITTED ON 05/09/2022 REQUESTING TO AMEND THE MEANS OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

All issue remarks must be addressed.

3. The first issue remark provided notice of an opportunity to object to claim 41S 135340-00 during the Preliminary Decree. No objections were filed.

4. The second issue remark noted issues with the claimed point of diversion and means of diversion, which were decreed as follows:

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2W2NE	36	18N	17E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	MULTIPLE					
	THE MEANS OF DIVERSION INVOLVES A HEADGATE WITH PIPELINE AND INSTREAM USE.					

6. A DNRC claim examiner's notes in the claim file indicated that Richard C. Lund told her that no headgate was present and "...they really just use it for gold panning and moving buckets from the sluice. Maybe moved 100 buckets since they first bought it..." The Claimants each submitted an Amendment form indicating the means of diversion should be modified from "headgate" to "instream".

PRINCIPLES AND CONCLUSIONS OF LAW

1. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-

248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

RECOMMENDATIONS

1. The means of diversion for claim 41S 135340-00 should be modified to “instream”.

2. The issue remarks should be removed from claim 41S 135340-00.

An abstract is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Christian J. Lund
13417 54th St. NW
Williston, ND 58801-8999

Richard C. Lund
515 Brassey St.
Lewistown, MT 59457

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S

Water Right Number: 41S 135340-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CHRISTIAN J LUND
13417 54TH ST NW
WILLISTON, ND 58801-8999

RICHARD C LUND
515 BRASSEY ST
LEWISTOWN, MT 59457

Priority Date: DECEMBER 31, 1956

Type of Historical Right: USE

Purpose (Use): MINING

Flow Rate: 10.00 GPM

***Volume:** THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES
THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED, IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Source Name: IRON GULCH

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2W2NE	36	18N	17E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: INSTREAM

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2W2NE	36	18N	17E	FERGUS